

BEFORE THE
OFFICE OF ALLIED HEALTH PROFESSIONALS
PHYSICAL THERAPY GOVERNING BOARD
CONCORD NH 03301

In the Matter of:

Stephen E. Chinetti, PTI
License No. 571
(Adjudicatory Proceeding)

Docket # 02-04

DECISION AND ORDER

Before the New Hampshire Physical Therapy Governing Board is an adjudicatory proceeding involving a disciplinary action regarding Stephen E. Chinetti, PTI (the Respondent).

APPEARANCES

Marguerite Wageling, Esq., AAG, appeared as Hearing Counsel.
Stephen E. Chinetti appeared pro se.

BACKGROUND INFORMATION

On about May 18, 2002, the New Hampshire Physical Therapy Governing Board ("the Board") received a written complaint from P.A.M. (the Complainant) alleging fraud and professional incompetence of Stephen Chinetti, a licensed physical therapist, which complaint was forwarded to it from the Consumer Protection and Anti Trust Bureau.

On approximately November 22, 2002, a Notice of Hearing was issued with a hearing scheduled for December 18, 2002 at 2:00 p.m. The Notice of Hearing was sent by certified mail to the Respondent to his business address at a PO Box in Salem, NH and to his residential address in Haverhill, MA. Additionally, a copy was sent via regular mail to counsel who represented Mr. Chinetti in an unrelated Board hearing earlier in 2002.

The certified mailing of the Notice of Hearing to Mr. Chinetti was returned as undelivered; and Mr. Chinetti did not appear at the December 18, 2002 hearing. Therefore the Board continued the hearing to January 15, 2003. The Board issued an Order of Continuance and Notice of Hearing regarding the January 15th hearing which was sent to the Respondent via regular and certified mail to his business address in Salem, NH and to his residence in Haverhill, MA.

An additional copy was sent via certified mail to his prior counsel. By letter dated December 28, 2002, prior counsel responded indicating that he no longer represented Mr. Chinetti.

The notices directed to Mr. Chinetti via certified mail regarding the January 15th hearing were returned as undelivered. However, the notices sent by regular mail were not returned. On January 15, 2003, the Respondent did not appear; the complainant was again present on that date. However, as there was no quorum of the Board on this date, the hearing was continued to February 19, 2003 at 2 p.m.

The Board sent the Notice of hearing with the February 19th hearing date to Mr. Chinetti by both regular and certified mail to his business and personal addresses. Additionally, the Board enlisted the assistance of the Rockingham County Sheriff and the North Essex County Constable to attempt in hand delivery to the Respondent in the respective geographical areas. Both the certified copies and the sheriff's and constable's service were returned as undelivered or unable to effectuate in-hand service. The packages sent by regular mail were not returned.

On February 19th, Mr. Chinetti appeared for the hearing. However, the complainant was not present. Mr. Chinetti requested that the hearing not proceed unless the complainant was present for his questioning. He assented to a continuance to an established date of March 19th at 2 p.m. Mr. Chinetti also confirmed his business and residential addresses as, in fact, being the ones to which the Board had been sending its notices.

On March 19, 2003, the hearing proceeded as scheduled.

As stated in the Notice of Hearing, the issues to be determined are:

- A. Whether between January and February 2002, Stephen Chinetti engaged in professional misconduct contrary to RSA 328-A:23 , IV (k) and American Physical Therapy Association Conduct Code of Ethics Principle Two and Four by informing patient P.A.M. not to worry about a referral to him as he would take care of it, informing P.A.M. that all was in order with her insurance company and that he had communicated with her insurance company, knowing that some or all of these statements were false;
- B. Whether between January and February 2002, Stephen Chinetti engaged in professional misconduct contrary to RSA 328-A:23 , IV (k) and American Physical Therapy Association Conduct Code of Ethics Principle Two and Four by informing patient P.A.M. that he was not positive of the amount due him as a co-payment to her CIGNA insurance payment but estimating the cost to be \$45 per session and then requesting and receiving a payment from P.A.M. toward the co-payment balance in the amount of \$321, knowing all the while that all or some of the statements were false;

- C. Whether between January and February 2002, Stephen Chinetti engaged in professional misconduct contrary to RSA 328-A:23 , IV (j) and/or (k) and American Physical Therapy Association Conduct Code of Ethics Principle Three and Eight by unreasonably delaying clinical record transfer and further failing to make available accurate and relevant information to P.A.M. about her care; and
- D. If any of the above allegations are proven, whether and to what extent Mr. Chinetti should be subjected to one or more of the disciplinary sanctions authorized by RSA 328-F:23,V.

The Board considered all of the testimony presented and all the exhibits entered. The Board heard the following testimony.

P.A.M. testified that she fractured her left arm in December 2001, requiring surgery. Her surgeon, Dr. Marks, recommended post-operative physical therapy. P.A.M. had no previous experience with physical therapists. She identified through the yellow pages Stiles Therapy as providing physical therapy in her geographic area and she scheduled an appointment there.

Throughout the relevant periods, P.A.M. had HMO health coverage through Healthsource/CIGNA Health and has had this coverage since 1995. To obtain coverage for the services, P.A.M. was aware that she needed to obtain a referral from her primary care physician. Prior to going to the first appointment, P.A.M. requested and obtained a referral for physical therapy treatment from her primary care physician, Dr. Kirby. The referral provided for 20 one-hour visits. Later, P.A.M. discovered that her PCP had actually issued a referral for physical therapy to be provided by Healthsouth located on Stiles Road and had not issued a referral for Stiles Therapy.

All of P.A.M.'s dealings with Stiles Therapy were with Stephen Chinetti and no one else. When P.A. M. first contacted Stiles Therapy to set up an appointment, she asked about the need for a referral. Mr. Chinetti told her not to worry he would take care of that. Nevertheless, she obtained a referral. At her first appointment, P.A.M. gave Mr. Chinetti her insurance card. Mr. Chinetti left the room presumably to copy the information from her card for insurance purposes. Mr. Chinetti did not have P.A.M. sign any statement indicating her financial responsibility for the services provided.

Throughout January and February 2002 during the course of treatment with Mr. Chinetti, P.A. M. tried unsuccessfully to determine from Mr. Chinetti what her share of the cost of the physical therapy would be and whether or not Mr. Chinetti had submitted claims for her care to her insurer. Mr. Chinetti did not provide adequate answers. At one point he indicated that his fees were about \$45, but that he would have to check. He did not say with whom. P.A. M. also contacted her insurer a number of times throughout that same period to determine the status of claims by Mr. Chinetti for physical therapy and to determine what her costs would be. When the insurer told her no claims had been submitted, she inquired about this with Mr. Chinetti who told her not to worry about it, that he had talked to her insurer and

they were going to take care of it. A week or so later when the insurer again reported to her that no claims had been submitted, she again inquired with Mr. Chinetti who responded that he would look into it.

On about the tenth visit, January 25, 2002, Mr. Chinetti closed the door to the examining room with P.A. M. inside in order to discuss P.A.M.'s financial obligations. He told her: "This is between you and I. I don't want you to tell any one. I know money is tight with you so just write me a check for \$300." The conversation was confusing to P.A.M., as she still did not know what the charges for the services were. At the following visit, January 28, 2002, P.A.M. wrote a check to Mr. Chinetti for \$300. At no time, did P.A.M. receive a bill for services or a receipt for the payment that she made. She assumed that the \$300 payment request represented a \$30 co-pay for each of her ten visits.

On February 11th, P.A.M. spoke with her insurer again and discovered that no claims had yet been submitted. She pressed the customer service representative to look into her situation more closely and then learned for the first time that there was no referral for Mr. Chinetti to provide physical therapy services to her but that there was a referral for Healthsouth. She was told that Stiles Therapy did not have a contract with her insurer and that it was not a participating provider.

P.A.M. testified that she also had concerns about the adequacy of the treatment she was receiving. Her surgeon had informed her that she was not making adequate physical therapy progress and if matters did not improve she might need additional surgery. She felt that later visits with Mr. Chinetti lasted about 25 minutes in duration instead of the prescribed hour, and, consisted of hot pack treatments with minimal other physical therapy provided.

After learning that Stiles Therapy was not a participating provider and, that no claims had been submitted by Stiles Therapy to her insurer, P.A.M. contacted her doctor's office for advice. She was directed to obtain the records of treatment from Stiles Therapy and to go to Healthsouth for physical therapy care. P.A.M. then called Mr. Chinetti and confronted him with the fact that he had no contract with her insurer and had submitted no claims. She also questioned the care that she was receiving. Mr. Chinetti responded saying that that he felt they could work things out.

In their conversation, P.A.M. directed Mr. Chinetti to send copies of her records to her surgeon and to Healthsouth, where she was to get physical therapy, along with a copy of the original prescription for physical therapy services. Mr. Chinetti never sent her medical records to her medical providers. Eventually, she hired an attorney to intervene on her behalf. On May 14, 2002, her lawyer wrote a letter to Mr. Chinetti requesting copies of all P.A.M.'s medical records and provided Mr. Chinetti with an Authorization To Release Medical Records signed by P.A.M. Mr. Chinetti did not respond. In June 2002, P.A.M.'s lawyer sent a second letter requesting the records. Mr. Chinetti never sent the requested records to P.A.M. or to her lawyer.

After reflecting upon her experience with Mr. Chinetti, P.A.M. wrote a letter of complaint to the Attorney General's Office, Bureau of Consumer Protection.

An affidavit from CIGNA was offered into evidence. Mr. Chinetti objected to the exhibit as it was not sent to him three days prior to the hearing as the Board had directed in its Notice of Hearing, but instead was sent two days prior to the hearing. Mr. Chinetti indicated that he had had an opportunity to review the proposed exhibit with his lawyer the day before the hearing. His objection concerned the timeliness of the proposed exhibit, but did not claim prejudice or otherwise indicate that the content of the affidavit was objectionable. After consideration, the Board accepted the document into evidence given that Mr. Chinetti was not prejudiced by the late submission of the document and had an opportunity to review its contents with counsel. The affidavit confirms that there was no referral for P.A.M. to receive physical therapy services from Mr. Chinetti, which is not at issue. Additionally, the affidavit indicates that Mr. Chinetti did call the insurer on January 25, 2002 to inquire regarding out-of-network benefits. Mr. Chinetti provided extensive direct testimony regarding his conversation with CIGNA on that date.

Mr. Donald Vandal also testified. Mr. Vandal is an investigator with the Administrative Prosecutions Unit (APU) at the Consumer Protection Bureau. Mr. Vandal described the investigation that he had conducted. The information that he learned was consistent with P.A.M.'s testimony. In response to the concern P.A.M. had raised about not being able to get copies of her medical records from Mr. Chinetti, Mr. Vandal requested that the Board issue a subpoena for P.A.M.'s medical records to Mr. Chinetti. This was done. In response to the subpoena, Mr. Chinetti provided P.A.M.'s medical records. These were received by the Attorney General's Office between May 25 and May 29, 2002. The Attorney General's Office later learned that P.A.M. had obtained the services of a lawyer who attempted unsuccessfully to get P.A.M.'s medical records from Mr. Chinetti in May and again in June of 2002. Subsequently, the attorney petitioned the Board and obtained copies of the subpoenaed medical records from the Board.

Mr. Chinetti testified regarding his view of the events at issue. Mr. Chinetti has operated Stiles Therapy since about 1999 or 2000, which is run solely by him. He has been a licensed physical therapist since around 1974. He was a participating provider with CIGNA at some point in the 1980's.

Regarding how P.A.M. arrived for treatment at his business, Mr. Chinetti acknowledged there was an error made at this initial meeting; however, he observed, the referral error was no fault of his.

Mr. Chinetti testified that despite his experience in the field that he was unaware that CIGNA required a referral for treatment. He stated that he called CIGNA on January 25th regarding P.A.M.'s physical therapy coverage. At that time, he learned from CIGNA that P.A.M. had HMO coverage. If she received services within the network she would be responsible for paying 50% of the fee times 20 visits. Mr. Chinetti stated that he was part of the out-of-network option. For this, he stated, her cost was \$15 per visit. He calculated that at a cost of \$15 per visit, her maximum cost would be \$300 for 20 visits. He acknowledged

that he did not see P.A.M. 20 times, but saw her only 17 times. He stated that he did not think to refund her the moneys paid for the three visits that had not occurred, as he did not review her file after her complaint regarding his billing practices. He also observed, that if he had known she was dissatisfied with her care, he would not have billed her at all or would have issued a refund. On cross, he acknowledged that he did become aware that P.A.M. was dissatisfied with his care when she terminated the care and when a complaint was made to the Board, but he did not return her payment. He denied ever telling P.A.M. that she might owe \$45 per visit.

Mr. Chinetti confirmed that on January 25th, he was made aware in his conversation with CIGNA that, in fact, he was not a provider with Cigna/Healthsource at the time of P.A.M.'s treatment.

With regard to P.A.M.'s claim that he had created an impression that he was "making a deal" with her for payment that was less than she owed, Mr. Chinetti testified that he did not mean to create such an impression. He merely closed the door and instructed her to tell no one of these arrangements for payment out of respect for her privacy.

Regarding the lack of release of P.A.M.'s medical records, Mr. Chinetti testified that P.A.M. never asked him to forward her records to Dr. Marks or to Healthsouth. Initially, Mr. Chinetti stated in his direct testimony that he was unable to provide the records to P.A.M.'s attorney. He received P.A.M.'s attorney's letter seeking the records after he had hand-delivered the records to the Attorney General's Office. As he was no longer in possession of the records, he could not turn them over. However, upon being pressed about this issue on cross-examination, Mr. Chinetti disclosed that, in fact, he had kept a copy of the records, which were provided to the Attorney General's Office. He acknowledged that he had the ability at all times to provide copies of the requested medical records to P.A.M. or to her attorney. He did not have a reason as to why he did not provide the requested records.

FINDINGS OF FACT

Stephen Chinetti was issued a license to practice physical therapy in the State of New Hampshire on December 3, 1981. He was issued license # 0571. Mr. Chinetti was practicing physical therapy at Stiles Physical Therapy in Salem, New Hampshire until about May 29, 2002.

P.A.M. sent a complaint charging fraud and incompetence by Stephen Chinetti PT, d/b/a Stiles Physical Therapy to the Consumer Protection Bureau of the Office of the Attorney General on about March 18, 2002.

P.A.M. saw Mr. Chinetti 16 or 17 times between January and February 2002 for physical therapy. Concerned about budgeting issues, P.A.M. tried throughout that period to establish the cost and co-payment expected for treatment with Stiles Physical Therapy. Mr. Chinetti told P.A.M. not to worry, that he would take care of things. At other points, he told her that he was talking to her insurance company or, that he would follow up with the insurer

regarding her concerns. Initially, when P.A.M. questioned Stephen Chinetti about anticipated charges, he stated that the cost might be about \$45, but he did not know.

Throughout the treatment period, P.A.M. inquired with her insurance company regarding coverage for the services and the status of claims for these services. She was told by the insurer that no claims for treatment had been submitted.

On Friday, January 25, 2002 Mr. Chinetti spoke with a CIGNA representative regarding P.A.M.'s treatment and reimbursement. The insurer stated that he was not a network provider with CIGNA. According to CIGNA, there was a large network of physical therapy providers in the area, and an out-of-network referral to Mr. Chinetti would most likely not be approved. On Friday, January 25, 2002, Mr. Chinetti asked P.A.M. for payment of \$300.00. On Monday, January 28, 2002, P.A.M. paid Mr. Chinetti \$300.00 by check.

Finally, in February 2002, P.A.M. learned that there was no referral for services by Mr. Chinetti and that he was not a participating provider with CIGNA, her health insurer. This discovery was made as a result of P.A.M.'s efforts to monitor her physical therapy treatment with CIGNA and her primary care physician. Although Mr. Chinetti was not a participating provider, he nevertheless assured P.A.M. that he was talking to her insurance company and everything would be taken care of.

With regard to Mr. Chinetti's handling of payment issues with P.A.M., Mr. Chinetti did not have P.A.M. sign a statement indicating financial responsibility for the services provided or a description of the terms of his services. He never provided her with a bill for services or a receipt for payments she made, nor did he record payment in her records. Mr. Chinetti testified that the \$300 payment was for 20 visits at \$15 per visits, but never told the patient this. He also did not refund the balance for visits, which were not provided. With regard to the timing of his \$300 payment request, on January 25th Mr. Chinetti learned from CIGNA that he was not an in-network provider and was considered to be an out-of-network provider. As such, his ability to obtain reimbursement and the level of payment was in question. It was not until January 25th that Mr. Chinetti for the first time demanded payment from P.A.M. The Board finds P.A.M.'s testimony regarding these matters to be credible.

Subsequent to the discovery of the referral error, P.A.M. was instructed by her doctor to have her records of treatment forwarded to Healthsouth and to the doctor's office. She asked Mr. Chinetti to provide copies of her records to these entities. He failed to do so. The Board found the complainant's testimony credible and Mr. Chinetti's testimony denying that she had requested medical records be provided to her medical providers to lack credibility.

Subsequently, P.A.M. obtained the services of a lawyer who requested on May 14, 2002 and again on June 11, 2002 that Mr. Chinetti provide the medical records to him pursuant to a signed patient authorization. Mr. Chinetti never provided the requested documents to Healthsouth, P.A.M.'s doctor, to P.A.M., or to her attorney.

On April 26, 2002, P.A.M.'s records were subpoenaed by the Office of Allied Health Professionals. The subpoenaed records were provided to the Attorney General's Office between May 25 and May 29, 2002. Although he retained a copy of the records, Mr. Chinetti never provided P.A.M.'s records to her attorney as requested.

The board finds that above conduct by Mr. Chinetti is in violation of RSA 328-F:23, IV (c), (d), (j) and (k), as it is unprofessional conduct in the practice of the profession, involved repeated violations of the laws and rules governing the practice of physical therapy, and demonstrated a significant failure to adhere to the standards of ethics governing the profession.

In particular, Mr. Chinetti's failure to provide P.A.M. with copies of her medical records as requested is unprofessional conduct in violation of RSA 328-F:23, IV, (j), has unreasonably delayed clinical record transfer, and (k) has failed to adhere to the recognized standards of ethics of their profession, as well as Principles 3 and 8, of the American Physical Therapy Code of Ethics. Principle 3 provides that "a physical therapist shall comply with laws and regulations governing physical therapy and shall strive to effect changes that benefit". Principle 8, B specifies that "[u]pon request of the patient, the physical therapist shall provide or make available the medical record to the patient or a patient-designated third party".

RULINGS OF LAW

Pursuant to RSA 328-F:23, IV, the Board may take disciplinary action against any person licensed by it upon finding that the person (j) "Has unreasonably delayed clinical record transfer" or "(k) Has failed to adhere to the recognized standards of ethics of their profession."

Under Principles 2, 3, 4 and 8 of the Code of Ethics of the American Physical Therapy Association, "A physical therapist shall

(2) act in a trustworthy manner towards patients/clients, and in all other aspects of physical therapy practice

(3) comply with laws and regulations governing physical therapy and shall strive to effect changes that benefit patients/clients

(4) exercise sound professional judgment

(8) provide and make available accurate and relevant information to patients/clients about their care and to the public about physical therapy services."

The Board finds Mr. Chinetti's conduct of telling P.A.M. not to worry about her referral and that he would take care of it to be unprofessional conduct and in violation of Principle 2 of the Principles of the American Physical Therapy Code of Ethics; A physical therapist shall act in a trustworthy manner towards patients/clients, and in all other aspects of physical therapy practice.

Further, the Board finds that Mr. Chinetti's failure to make P.A.M. aware of the cost for services to be a violation of Principle 7, E, "Fees for physical therapy services should be reasonable for the service performed, considering the setting in which it is provided, practice costs in the geographic area, judgment of other organizations, and other relevant factors." The board finds Mr. Chinetti's failure to provide the patient, her other medical providers, or the patient's attorney with copies of her medical records violates RSA 328-F:23,IV (j).

DISCUSSION AND CONCLUSIONS

RSA 328-F:23, IV, (j), states a physical therapist is prohibited from unreasonably delaying clinical record transfer. Under RSA 328-F:23, IV, (k), a physical therapist is obligated to adhere to the recognized standards of ethics of their profession.

Based on the evidence provided, the Board concludes that Mr. Chinetti engaged in unprofessional conduct, in violation of RSA 328-F: 23, IV, (j) and (k), and Principles 2, 3, 4, 7, and 8 of the Code of Ethics of the American Physical Therapy Association.

The Board found credible the testimony by P.A.M. that Mr. Chinetti told her not to worry about the costs of treatment and that he was talking to the insurance company about coverage. The Board finds that P.A.M. was misled by Mr. Chinetti regarding his provider status or lack thereof with CIGNA. This is further supported by Mr. Chinetti's testimony regarding his conversation with CIGNA on January 25th as well as by CIGNA's affidavit indicating that reimbursement for his services was in some question. Mr. Chinetti's demand for payment from P.A.M. was made the day that he learned of his questionable provider status. Mr. Chinetti made no record of the payments received. He did not inform P.A.M. of the basis for the amount owed or how it was calculated. Moreover, although he testified that he had assessed the amount owed as based on \$15 for each of 20 visits, he noted that only 17 visits were actually provided. Despite knowledge of this fact, he did not refund the difference of the balance to P.A.M.

With regard to the release of medical records, Mr. Chinetti was at a loss to provide a reason for his continuing refusal to provide the requested records to P.A.M. or her attorney. His statements that P.A.M. had never requested the records be provided to her care providers lacked credibility. Rather, Mr. Chinetti appeared somewhat evasive and less than accurate on these issues.

All of these factors together appear to demonstrate a pattern in Mr. Chinetti's failure to adhere to professional and ethical conduct. Mr. Chinetti's conduct towards P.A.M. violated professional standards and ethical boundaries of RSA 328-F: 23, IV (j) and (k). His responsibility as a licensed physical therapist is to respect the professional boundaries in all client relationships.

Therefore it is the consensus of the Board in their obligation to safeguard the consumer from unethical, unprofessional conduct that Mr. Chinetti repeatedly violated recognized standards of ethical and professional conduct, as described above.

For reasons unrelated to this matter, Mr. Chinetti has previously had his license to practice physical therapy revoked.

ORDER

THEREFORE, IT IS ORDERED by the Board that, pursuant to RSA328-F:23, V, in addition to meeting all the conditions of the previous Board order issued on September 5, 2002, the Respondent must fully satisfy the additional conditions contained in this order before any consideration of reinstatement of a physical therapy license.

IT IS FURTHER ORDERED that Mr. Chinetti's license is revoked for an additional one-year period and through September 5, 2008.

IT IS FURTHER ORDERED, that Mr. Chinetti shall pay an additional fine of \$2,000.00, which sum shall be paid to the Board, no later than 90 days from the date of this order.


IT IS FURTHER ORDERED, that Mr. Chinetti complete and provide documentation of an additional 15 hours of medical ethics relative to patient exploitation. The course shall be completed no later than 365 days from the date of this document, November 19, 2003.

IT IS FURTHER ORDERED, that failure of the Respondent to meet any of these requirements will result in permanent revocation of his license.

IT IS FURTHER ORDERED that any exhibits, shall be kept confidential to the extent necessary to avoid revealing the identity of the patient(s) involved.

BY ORDER OF THE BOARD* /

Dated: 11-19 2003



Margaret M. Donohue, PT, Chairperson
Physical Therapy Governing Board
Office of Allied Health Professionals

*Board members Luanne Udell, Elizabeth Cary, Judy Cote, and Chair Margaret Donohue, Hearing Officer, heard this case. Board member Ann Greiner was recused as she assisted with the investigation.